Supreme Court, U. S.
FILED
JUN 30 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1979

No. 79 - 1937

WALNUT PROPERTIES, INC.,

Petitioner,

vs.

LONG BEACH CITY COUNCIL,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION TWO

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SECOND APPELLATE DISTRICT
DIVISION TWO

STATEMENT OF CASE

This case involves a zoning ordinance which regulates the location of adult entertainment businesses disseminating sexually explicit materials. The ordinance was adopted by the City of Long Beach in reliance on Young v. American Mini Theatres, Inc. (1976) 427

U.S. 50; 49 L.Ed.2d 310.

The proliferation of commercial uses which disseminate sexually explicit materials is a serious community problem which can cause a blighting effect on the quality of life in a community. In Young, supra, this Court has given to cities a vehicle to deal with this problem through a land-use zoning approach which is sensitive to both First Amendment rights of the operators of sexually explicit businesses and to a community's desire to maintain its quality of life.

It is submitted that Young is dispositive of the issues raised herein.

STATEMENT OF FACTS

On or about August 16, 1977, Petitioner made written application to the City Tax Collector for a business license to operate a motion picture theatre.

On or about August 31, 1977, a business license was issued to Petitioner as the new owner of the theatre.

On September 6, 1977, the City Council of the City of Long Beach adopted

a temporary, emergency Ordinance No. C-5343, effective on that date, which restricted the establishment of specified adult entertainment businesses.

On October 25, 1977, the City Council enacted Municipal Code Section 9120.41, the adult entertainment ordinance which took effect on November 25, 1977. Section 9120.41 incorporated the provisions of temporary, emergency Ordinance No. C-5343.

After issuance of the business license, Petitioner did not open its theatre for business until December 10, 1977, and on that date for the first time displayed motion pictures of the character defined in Section 9120.41. Petitioner exhibited on a regular basis films which were characterized by emphasis on "specified sexual activities" or "specified anatomical areas."

On or about February 7, 1978, the City instituted proceedings to revoke Petitioner's business license pursuant to Municipal Code Section 6100.9 (formerly § 6100.224). A hearing officer was appointed, and after a duly noticed public hearing, he recommended that Petitioner's

business license be revoked because the theatre was located within 500 feet of an area zoned for residential use and within 1,000 feet of a public school in violation of the provisions of Section 9120.41.

On May 9, 1978, the City Council held a public hearing to consider the recommendation of the hearing officer. The City Council concurred in that recommendation and revoked Petitioner's business license effective June 10, 1978. Thereafter, Petitioner sought judicial review.

ARGUMENT

I

THE ZONING ORDINANCE IS A VALID EXERCISE OF THE POLICE POWER

Section 9120.41 [1/] of the Long Beach Municipal Code is part of the Zoning Regulations of the City and is patterned after the Detroit ordinance which was

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1/ Renumbered as § 9120.17, effective May 4, 1979; however, to avoid confusion, the previous section number (§ 9120.41) will be used.

upheld in Young, supra.

The zoning ordinance establishes specific "locational" regulations for "adult entertainment" businesses, as defined, which are primarily devoted to the sale, display, or exhibition of matter relating to "specified sexual activities" or "specified anatomical areas" as defined. These locational requirements are superimposed like an overlay on underlying land-use districts. The ordinance provides a procedure for obtaining a zoning exception after a public hearing, which is designated as a "waiver of locational provisions." "The primary purpose of the regulation is to prevent the concentration or clustering of these businesses in any one area." The ordinance also seeks to protect surrounding neighborhoods from the "deleterious and adverse effects" of such businesses [§ 9120.41(a)]. 2/

The ordinance, per se, does not prohibit or prevent the operation or establishment of an adult motion picture theatre. It merely restricts the location of such an establishment, which is a traditionally accepted zoning function

since Euclid v. Ambler Realty Co. (1926) 272 U.S. 365; 71 L.Ed. 303, and Miller v. Board of Public Works (1925) 195 C. 477.

Thus, the ordinance regulates the commercial use of property, and as we will point out below, the city's governmental interest outweighs the incidental effect of the ordinance on First Amendment rights. In this context, it is firmly established that "[p]roperty rights must yield to the public interest served by zoning laws. . . ." (Robins v. Pruneyard Shopping Center [1979] 23

2/ The "locational" requirements provide that "it shall be unlawful to establish any such 'adult entertainment' business if the location is:

"1. Within five hundred feet of any area zoned for residential use;

"2. Within one thousand feet of any other 'adult entertainment' business; or

"3. Within one thousand feet of any public or private school, park, playground, public building, church, any non-commercial establishment operated by a bona fide religious organization, or any establishment likely to be used by minors."

C.3d 899, 906; 153 Cal.Rptr. 854.)

The law in California is that legislative zoning decisions are not subject to judicial interference as long as the propriety of the regulation remains a question upon which reasonable minds might differ. (Associated Homebuilders, Etc., Inc. v. City of Livermore [1976] 18 C.3d 582; 135 Cal.Rptr. 41; Clemons v. City of Los Angeles [1950] 36 C.2d 95; 222 P.2d 439.)

This Court has likewise taken a broad view of the application of local police power to zoning regulations. Although it has considered the validity of zoning regulations on only a few occasions, it has consistently upheld such regulations and given the police power broad and liberal construction. (Village of Euclid v. Ambler Realty Company, supra, [1926] 272 U.S. 365; 71 L.Ed. 303; Village of Belle Terre, et al. v. Boraas, et al. [1974] 416 U.S. 1; 39 L.Ed.2d 797.

This judicial policy of deference to legislative zoning decisions was again demonstrated in Young v. American Mini Theatres, supra, at 427 U.S. 71:

". . . It is not our function to appraise the wisdom of its decision to require adult theatres to be separated rather than concentrated in the same areas. In either event, the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." (Emphasis added.)

The city's governmental interest in preserving the quality of life, the total community environment, and the tone of commerce is given high priority by this Court.

Justice Powell, in Young, describes these governmental interests in this manner:

". . . Nor is there doubt that the interests furthered by this ordinance are both important and substantial. Without stable neighborhoods, both residential and commercial, large sections of a modern city quickly can deteriorate into an urban jungle with tragic consequences to social, environmental, and economic values. While I agree with respondents that no aspect of the police power enjoys immunity from searching constitutional scrutiny, it also is undeniable that zoning, when used to preserve

> the character of specific areas of a city, is perhaps 'the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life.' Village of Belle Terre v. Boraas, 416 US at 13, 39 L Ed 2d 797, ..." [Emphasis added.] (427 U.S. at p. 80; 49 L.Ed.2d at p. 332.)

Only a naive person cannot see the blighting and deleterious side effects of the commercial exploitation of materials involving "specified sexual activities" or "specified anatomical areas" on adjacent neighborhoods in central cities throughout the country.

Chief Justice Burger in Paris Adult Theatre I v. Slaton (1973) 413 U.S. 49; 37 L.Ed.2d 446 puts it this way:

> "The sum of experience, including that of the past two decades, affords an ample basis for legislatures to conclude that a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality, can be debased and distorted by crass commercial exploitation of sex. Nothing in the Constitution prohibits a State from reaching such

> a conclusion and acting on it legislatively simply because there is no conclusive evidence or empirical data."

Petitioner argues that the City could not adopt the ordinance because it had not conducted an independent study (gathered conclusive evidence or empirical data?) to justify its adoption. But, another study would be a wasteful duplication of effort. In order to "experiment with solutions," the City can look to the experience of other cities like Detroit, Los Angeles and Boston (where all adult entertainment businesses were concentrated in one area) to justify the need for an ordinance to remedy or prevent the problems of blight experienced by such cities; see Whalen v. Roe (1976) 429 U.S. 580; 51 L.Ed.2d 64.

As a final word on this subject, we again turn to the Paris Adult Theater case, supra, 413 U.S. 49; 37 L.Ed.2d 446 at pages 458 and 459:

> "But, it is argued, there are no scientific data which conclusively demonstrate that exposure to obscene material adversely affects men and women or their society. It is urged on behalf

> of the petitioners that, absent such a demonstration, any kind of state regulation is 'impermissible.' We reject this argument. It is not for us to resolve empirical uncertainties underlying state legislation, save in the exceptional case where that legislation plainly impinges upon rights protected by the Constitution itself.
>
> * * *
>
> "From the beginning of civilized societies, legislators and judges have acted on various unprovable assumptions. Such assumptions underlie much lawful state regulation of commercial and business affairs. . . ."

If the legislative body determines that residential neighborhoods should be protected from the deleterious side effects of adult entertainment businesses, it then may draw the applicable line of demarcation (Village of Belle Terre v. Boraas, supra, [1974] 416 U.S. 1; 39 L. Ed.2d 79). This is a proper legislative function and courts usually do not question the wisdom of such decision.

The Detroit ordinance also contained a provision prohibiting an adult entertainment business within 500 feet of an area zoned for residential use. The

Petitioner erroneously concludes that this provision was disapproved by this Court. Actually, the provision was not contested because Detroit amended its ordinance to include the more precise designation of land zoned for residential use instead of land used for residential purpose (Young, supra, 427 U.S. 50 316, fn. 2; 49 L.Ed.2d 310).

II

THE ORDINANCE DOES NOT UNCONSTITUTIONALLY RESTRICT FIRST AMENDMENT RIGHTS AND THERE IS A RATIONAL BASIS FOR ITS ADOPTION

The subject ordinance does not in any way censor or ban any type of expression. It merely controls the places where commercial land uses which sell sexually explicit materials or entertainment can be located. Petitioner is not denied access to the market nor is the public unable to satisfy its appetite for sexually explicit material or entertainment.

From the very inception, zoning ordinances have imposed locational restrictions on all types of land uses.

It is beyond dispute that a zoning ordinance may permit bookstores, movie theatres, or other commercial enterprises which disseminate material protected by the First Amendment in certain zones and prohibit them in others without violating the First Amendment.

In Young, supra, this Court upheld zoning restrictions on the location of "adult entertaiment" businesses essentially identical to those in the Long Beach ordinance. The "majority opinion" is composed of a plurality opinion by Justice Stevens speaking for four justices and of a concurring opinion by Justice Powell.

Both Justice Stevens' and Justice Powell's opinions conclude that the Detroit ordinance does not unconstitutionally restrict First Amendment rights. Justice Stevens reasoned that just as a city may, and usually does impose licensing and locational restrictions in general without running afoul of the prior restraint doctrine, so may a city impose special licensing and locational restrictions on adult theatres. The Court further reasoned that no prior

restraint results from such locational and licensing restrictions so long as they do not have the effect of denying distributors of adult films access to their market. (Young, supra, 427 U.S. 62-63; 49 L.Ed. 2d 321-322.)

Having concluded that the Detroit ordinance does not violate the First Amendment, Justice Stevens then concludes that it does not violate the Equal Protection Clause on the ground that the content of the materials disseminated by sexually explicit businesses may be used to classify said business differently than similar businesses which sell non-erotic materials. In doing so, Justice Stevens applied the rational basis test. (Young, supra, 427 U.S. 70-72; 49 L.Ed. 2d 326-327.)

Justice Powell concurs with the plurality opinion that the ordinance does not violate the First Amendment. He concludes that the ordinance imposes typical time, place and manner restrictions common to zoning ordinances. However, he believes the ordinance does not regulate "adult businesses" because of the content of the materials they dis-

seminate, but rather because of the deleterious effect these businessses have on their surroundings, an effect which is markedly different from other types of businesses. (Footnote 6, 427 U.S. 83; 49 L.Ed.2d 333.) He differs with the plurality opinion in its holding that non-obscene, erotic materials may be treated differently under First Amendment principles from other forms of protected expression. (Footnote 1, 427 U.S. 73; 49 L.Ed.2d 327.) Without needing to resort to the hypotheses that erotic non-obscene materials are less fully protected than, for example, political speeches, Justice Powell found the ordinance supportable simply by application of the balancing test derived from United States v. O'Brien (1968) 391 U.S. 365; 20 L.Ed.2d 672.

Although the plurality and concurring opinions differ somewhat in approach and analysis, they concur in the determination that the Detroit ordinance does not violate the First Amendment, and that "[a]t most the impact of the ordinance on those interests is incidental and minimal."

Other jurisdictions which have considered Young have found it dispositive. In Northend Cinema, Inc. v. City of Seattle (1978) 585 P.2d 1153, 1158, the Washington Supreme Court, in considering the constitutionality of a Seattle zoning ordinance requiring that adult movie theatres be located in one zone, found Young to be dispositive, stating:

> "We need not, of course, construe the provisions of our state constitution identically with the corresponding provisions of the federal constitution. Darrin v. Gould, 95 Wash. 2d 859, 868, 540 P.2d 882 (1975). In this case, however, we find the reasoning of Young persuasive. It acknowledges and accommodates the important interest of the state in exercising its police power to protect city neighborhoods against degradation, while preserving the democratic principles the constitutional provisions were designed to protect. We therefore find it appropriate to apply the general rule that language in our state constitution will be given the same interpretation as that given the federal constitutional provision by the United States Supreme Court."

The court then reviewed the specific

provisions of Seattle's zoning ordinance and concluded as follows:

> "We conclude the city's paramount interest in protecting, preserving, and improving the character and quality of its residential neighborhhods is sufficient to justify this non-discriminatory zoning regulation of adult movie theatres. We find no violation of First Amendment or equal protection guarantees."

The Supreme Court of Georgia also found Young dispositive in Airport Bookstore, Inc. v. Jackson (1978) 248 S.E.2d 623. This case involves an ordinance of the City of Atlanta which requires licensing of certain sex related businesses. The Court relies on Young and states as follows with reference to Young:

> "The court held that even though a city could not suppress adult films, it could place them in a different classification from other films and regulate them. Thus, the City of Atlanta is not prohibited by freedom of speech or equal protection considerations from classifying adult bookstores, adult motion picture theatres, and adult entertainment establishments differently from other book-

stores, theatres and places of entertainment, and thereafter regulating them."

III

THE ORDINANCE IS NEITHER VAGUE NOR OVERBROAD

Petitioner contends that the ordinance under scrutiny is vague as to what constitutes adult entertainment and how the locational requirements are applied.

A similar argument on vagueness was rejected in Young (427 U.S. at pp. 58-61; 49 L.Ed.2d at pp. 319-321) because the ordinance was unquestionably applicable to the theatre owner, and since the ordinance did not "have a significant deterrent effect on the exhibition of films protected by the First Amendment," the theatre owner did not have standing to raise "the hypothetical claims of persons not before the Court."

This Court also noted that the doctrine of constitutional vagueness is not applicable "if the statute's deterrent effect on legitimate expression is not 'both real and substantial,' and

if the statute is 'readily subject to a narrowing construction by the state courts.'"

Because this zoning ordinance explicitly authorizes the exhibition of adult movies and other adult uses at numerous locations in the City, the ordinance does not have a "significant deterrent effect on the exhibition of films protected by the First Amendment."

The question of vagueness cannot be viewed in a vacuum, and mathematical precision is not required (Rose v. Locke [1975] 423 U.S. 48; 46 L.Ed.2d 185).

The subject ordinance defines "adult motion picture theater" as a building used for "presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas' for observation by patrons therein." [§ 9120.41(b)1B.]

This definition is identical to the Detroit ordinance and is directed against presenting material which emphasizes "specified sexual activities" or "specified anatomical areas."

In construing the language of a statute, a court may cure any uncertainty by "appropriate interpretation" and should apply the general principle that "legislation should be construed, if reasonably possible, to preserve its constitutionality" (Kash Enterprises, Inc. v. City of Los Angeles [1977] 19 C.3d 294, 305; 138 C.R. 53).

Thus, the reference to a "public or private school" can be narrowly construed by a court to exclude an institution of higher learning. This does not help Petitioner because its theatre is also located less than 500 feet from a residentially zoned area.

Petitioner also complains that the locational requirement referring to an establishment "likely to be used by minors" is vague. If this is so, the ordinance would still be subject to validation by judicial construction through the "simple expedient of excising the offending provisions." (Welton v. City of Los Angeles, [1976] 18 C.3d 497.) The severance of this provision would in no way affect the remainder of the ordinance. (Renba Lil v. Kortz [1976] 65

C.A.3d 467; 135 C.R. 287.)

It is submitted that the Long Beach ordinance is "reasonably susceptible to an interpretation consistent with the Constitution;" and may be construed to limit its effect and operation to matters that may be constitutionally regulated or prohibited.

IV

THE ORDINANCE DOES NOT DENY ACCESS TO PROTECTED EXPRESSION

Petitioner argues that the ordinance denies patrons access to the adult entertainment market.

In the criminal trial, it was brought out that Petitioner owns and operates an additional "adult" movie theatre in Long Beach besides the theatre involved in this case. Certainly, it has not been denied access.

Many other adult movie theatres, adult bookstores, adult hotels and motels, etc., are currently in existence in this City to provide access to citizens seeking such entertainment.

In the criminal appeal, the City Prosecutor lodged with the Appellate Department of the Superior Court facts from the Police Department which specified the kinds and numbers of "adult entertainment" businesses currently available in the City of Long Beach:

> " . . . [W]e find that Long Beach currently has fourteen (14) adult bookstores, seven (7) adult motion picture theaters (including mini motion picture theaters), four (4) adult motels, several adult motion picture arcades . . . no (0) cabarets, seventeen (17) massage parlors, one (1) adult model studio, no (0) sexual encounter centers, and one (1) retailer of adult video-tape movies. Within the foregoing is a recently established massage parlor which was granted a license pursuant to the 'waiver' sections, § 9120.41(d)."

Petitioner claims that the ordinance restricts access by its nearly "total ban on new adult theatres." But, it acknowledges that potential sites would still exist in several commercial nodes and in industrial areas of the City. As such, its argument that the ordinance acts as a total "ban" is without merit.

Choice commercial areas are for the most part fully developed. At the present time, it would be difficult to build a new theatre in those areas even for the showing of "family" movies. This is an economic problem relating to the scarcity of land, which was not created by this ordinance.

As commercial areas are recycled (e.g., a Long Beach redevelopment project has now cleared for development over twenty-two acres in the downtown commercial area), more land will be made available. Even on vacant industrial sites, a person could build a theatre and provide abundant parking and other amenities which are lacking in old theatres. Since this is a highly mobile society, any patron who is interested would have no trouble driving anywhere in the City for adult entertainment.

Most new theatres are being built as part of shopping centers. A proprietor could lease or build at such locations and exhibit adult films.

Petitioner has not demonstrated that sites for building new theatres are not available. His allegation really

revolves around economic considerations. In that regard, we quote from Justice Powell in Young, supra, at 427 U.S. 78:

> ". . . The constraints of the ordinance with respect to location may indeed create economic loss for some who are engaged in this business. But in this respect they are affected no differently from any other commercial enterprise that suffers economic detriment as a result of land-use regulation. The cases are legion that sustained zoning against claims of serious economic damage. . . "

V

THERE IS NO EXCESSIVE OR UNBRIDLED DISCRETION VESTED IN ANY ENFORCEMENT OFFICER OR BODY

Petitioner contends that the ordinance gives unlimited and impermissible discretion to the Planning Commission in applying the "waiver" provisions.

In so doing, Petitioner would lead this Court to believe that it is dealing with some sort of censorship statute instead of a zoning ordinance.

The ordinance in question is not a licensing or permit issuing regulation.

Neither the City Council, the Planning Commission, nor any city official, has any authority thereunder to issue a license or permit as a precondition to the exercise of First Amendment Rights.

The license which was revoked in this case is a business license which is required of all persons doing business in the City. It is a revenue producing measure and is administered and issued by the City Tax Collector (§ 6000.8 L.B.M.C.), not by the City Council or the Planning Commission.

The business license is issued subject to all applicable laws including zoning and building regulations, and the Tax Collector may not issue a business license if a business at a proposed location would violate the zoning laws (§ 6000.9 L.B.M.C. - formerly § 6100.191).

In the case at bar, upon discovery of the Petitioner's zoning violation, the City instituted proceedings pursuant to Section 6100.9 (formerly § 6100.224 L.B.M.C.) for the revocation of the business license. In addition, criminal action was brought against the Petitioner for the zoning violation.

Section 6100.9 permits revocation of a business license, after notice and public hearing, when a licensee violates any provision of the Municipal Code arising out of the operation of a business or where there are grounds that would warrant denial of the license if application were being made.

The revocation proceedings were conducted by the City Council, but that was its only involvement in the licensing issue. The Planning Commission was never involved in and has no authority over such licensing matters.

Most zoning ordinances have a provision which provides an administrative hearing procedure for the granting of exceptions to the established zoning. This procedure may be variously referred to as a variance, special use permit, or conditional use permit, among others. In the subject ordinance, the procedure is called a "waiver" mainly because the identical procedure labelled a "waiver" was approved in Young (427 U.S. at p. 54; 49 L.Ed.2d at p. 317).

A person is not entitled to a zoning exception or locational "waiver" as a

matter of right. It is only granted after certain findings are made by the Planning Commission after a public hearing.

The flexible standards contained in the ordinance for granting zoning exceptions have been uniformly approved by the courts. Thus, the "general welfare standard" was approved in Stoddard v. Edelman (1970) 4 C.A.3d 544; 84 C.R. 443, on pages 548 and 549:

> "The standard set by the Los Angeles Municipal Code is a 'general welfare standard.' . . . The code provides that the zoning administrator may issue a conditional use permit' . . . if he finds that the proposed location will be desirable to the public convenience or welfare and will be in harmony with the various elements and objectives of the Master Plan.' . . . At least two courts have squarely held that this ordinance is not too vague to be valid. . . . The Supreme Court sustained an even broader standard in a case involving San Francisco's building permit ordinance. . . . Against this background it is clear that petitioners' argument must fail. [Citations omitted.]"

In Schroeder v. Municipal Court (1977) 73 C.A.3d 841; 141 C.R. 85, an

ordinance which also indirectly affected free expression was challenged on the basis of vagueness. The ordinance prohibited the erection of radio and television antennae over specified heights "unless permitted" by the Planning Commission. The Court said in rejecting that challenge at page 848:

> "Appellant contends the ordinance is invalid because it prescribes no standards whereby he can obtain a variance from the city council allowing construction of an antennae higher than forty feet. He has cited no case, nor are we aware of any, requiring that a variance be provided when the basic ordinance is reasonable in its effect."

Since Petitioner would have no grounds for objection if there were no waiver provisions contained in Section 9120.41, it cannot object to the existence of a waiver provision, however vague, as being invalid on its face in view of the reasonable effect of this ordinance, to preserve and protect neighborhoods. When the waiver provisions are read in the context of the ordinance as a whole and not viewed as

isolated phrases, there is no vagueness.

VI

PETITIONER DID NOT HAVE A NONCONFORMING ADULT ENTERTAINMENT USE ON THE EFFECTIVE DATE OF THE ORDINANCE, AND THE ORDINANCE WAS NOT APPLIED RETROACTIVELY

Petitioner states that after the issuance of the business license, the City was precluded from applying the subject ordinance against it. This too is without merit.

On or about August 16, 1977, Petitioner made a written application to the City Tax Collector for a business license to operate a motion picture theatre.

When applying for the license, Petitioner represented to the City that the theatre had been in existence for 25 years; that it was applying for a license as the new owner; that the nature of the business was motion picture theatre; and the type of motion picture to be shown would be "family" motion pictures.

In reliance on the information submitted, the application was processed, and on or about August 31, 1977, a motion picture theatre license was issued.

The City's inquiry into the "type" of motion pictures to be shown at the location was pertinent because it was widely known at that time that the City was considering the adoption of an adult entertainment ordinance.

Indeed, on September 6, 1977, the City Council passed temporary, emergency Ordinance No. C-5343, effective as of that date, which limited the location of specified "adult entertainment businesses" to particularly described locations. Section 9120.41, which was subsequently enacted, incorporated the requirements set out in Ordinance No. C-5343.

On October 25, 1977, Section 9120.41 was enacted and took effect on November 25, 1977.

Petitioner did not open its theatre for business until December 10, 1977, when it established for the first time an adult motion picture theatre use, and for the first time displayed motion

pictures of the character defined in Section 9120.41.

In zoning, the doctrine of nonconforming use is really a corollary of the vested rights concept. "'A nonconforming use is a lawful use existing on the effective date of the zoning restriction and continuing since that time in nonconformance to the ordinance.'" (Hill v. City of Manhattan Beach [1971] 6 C.3d 279, 285; 98 C.R. 785.)

> ". . . [L]andowners have no vested right in existing or anticipated zoning ordinances. [Citation omitted.] A purchaser of land merely acquires a right to continue a use instituted before the enactment of a more restricted zoning. . . ." (Morse v. County of San Luis Obispo [1967] 247 C.A.2d 600, 602.)

In the case at bar, to qualify as a nonconforming use, Petitioner would have had to establish an "adult motion picture theatre" use between August 31, 1977, when the business license was issued, and September 6, 1977, when the temporary, emergency ordinance was adopted.

However, Petitioner's "adult motion picture theatre" use was not established

until December 10, 1977, by which time a more restrictive zoning regulation was in effect. Thus, before the emergency ordinance and the new zoning ordinance became effective, Petitioner had made no use of its theatre, let alone an "adult motion picture theatre" use. Petitioner argues that it was "remodelling" the theatre so it immediately converted to an adult entertainment use. This strains common sense since "remodelling" is not a use but preparation for a use.

It is settled law that "nonuse is not a nonconforming use" (emphasis added) (Hill, supra, 6 C.3d at p. 286). Reliance on an unused business license, without more, does not establish a nonconforming use, and a "use" is not established at the time a business license is issued.

A business license does not control or supersede existing or future zoning regulations and does not legalize a use that is made improper by such regulations. It does not immunize a licensee's business from other applicable laws. (Benson v. City of Long Beach [1943] 61 C.A.2d 189.)

In summary, a business license cannot legalize a business activity which is prohibited by law, and the business license issued to the Petitioner in August did not give it the authority to violate the law in December.

Persons living in a city or having dealings with it are presumed to have knowledge of city ordinances (Sunset Amusement Company v. Board of Police Commissioners [1972] 7 C.3d 64; 101 C.R. 768).

Thus, on September 6, 1977, when temporary, emgergency Ordinance No. C-5343 became effective, Petitioner was constructively put on notice of its provisions.

Again, on November 25, 1977, when Section 9120.41 became effective, Appellant was put on notice that the establishment of an "adult motion picture theatre" at the subject location would be in violation of the ordinance.

A license may be revoked after its issuance if there is a compelling public necessity (O'Hagen v. Board of Zoning Adjustment [1971] 19 C.A.3d 151; 96 C.R. 484; Sunset Amusement v. Board of Police Commissioners, supra).

It is therefore submitted that the City ordinances in question were properly applied to the Petitioner's adult motion picture theatre; that the Petitioner did not establish a legal nonconforming use as an adult motion picture theatre; and that the business license was properly revoked.

CONCLUSION

The Respondent Long Beach City Council respectfully requests this Court to deny the petition for a writ of certiorari because the decision below is consistent with and correctly interprets applicable law, both state and federal. No further statement by this Court is needed on any of the matters cited in the petition.

Respectfully submitted,
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